

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

JOHN E. ARMSTRONG,

Defendant-Appellant.

UNPUBLISHED

August 7, 2003

Nos. 236353, 236857, 242450,
242451, 242452

Wayne Circuit Court

LC Nos. 00-009350, 00-008526-
01, 00-009578-01, 00-
009577-01, 00-009576-
01

Before: Wilder, P.J., and Fitzgerald and Zahra, JJ.

PER CURIAM.

In these consolidated cases, defendant appeals as of right from two jury trial convictions for first-degree murder, MCL 750.316, and as by leave granted from three guilty plea convictions for second-degree murder, MCL 750.317. Defendant was sentenced to two life terms in prison without parole on his first-degree murder convictions, and to three terms of thirty-one years' to life imprisonment on his second degree murder convictions. All of defendant's sentences are to run concurrently. We affirm.

Defendant first asserts that the trial court erred by finding that he voluntarily waived his Fifth Amendment rights and admitting his custodial statements into evidence. We disagree. "Under the Due Process Clauses of the Fifth and Fourteenth Amendments, in order for a confession to be admissible the confession must have been made freely, voluntarily, and without compulsion or inducement of any sort. *People v Daoud*, 462 Mich 621, 631; 614 NW2d 152 (2000)(citations omitted). An involuntary confession is inadmissible. *Id.* at 630.

The voluntariness of a defendant's statement is a question of law that we review de novo. *People v Jobson*, 205 Mich App 708, 710; 518 NW2d 526 (1994). However, this Court gives deference to a trial court's findings, unless they are clearly erroneous. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *Id.*

As noted by our Supreme Court, the “voluntariness” element of a defendant’s waiver of his or her *Miranda*¹ rights relates to whether the waiver was “voluntary in the sense that it was the product of free and deliberate choice rather than intimidation, coercion, or deception . . .” *Daoud, supra* at 635, citing *Colorado v Connelly*, 479 US 157, 170; 107 S Ct 515; 93 L Ed 2d 473 (1986). Defendant maintains that his confessions were coerced by intimidating police tactics, and that because of his mental health status, his confessions were not knowing or intelligent.

Following a *Walker*² hearing, the trial court concluded that the evidence did not support defendant’s claims of coercion. The trial court also found more credible the testimony that defendant was fully cognizant of, and competent to waive, his right to remain silent. This Court will not interfere with the factfinder’s role in determining the weight of evidence or the credibility of witnesses, whether the factfinder is a jury, or the trial court. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), mod 441 Mich 1201 (1992); *People v Jackson*, 178 Mich App 62, 64-65; 443 NW2d 423 (1989). After review of the record, we are not left with a definite and firm conviction that a mistake has been made. *Jobson, supra* at 710. Defendant has failed to show any error in the trial court’s ruling that his confessions were admissible as evidence.

Defendant next asserts that with regard to his convictions for second degree murder in case numbers 242450, 242451 and 242452, his sentences of 31 years to life are violative of MCL §769.9(2). The prosecution concedes the error and we agree. MCL §769.9(2) provides in relevant part that:

“[i]f the sentence imposed by the court is for any term of years, the court shall fix both the minimum and the maximum of that sentence in terms of years. . . . The Court shall not impose a sentence in which the maximum penalty is life imprisonment with a minimum for a term of years included in the same sentence.”

Accordingly, we remand for resentencing. *People v Boswell*, 95 Mich App 405, 411; 291 NW2d 57 (1980).

Affirmed.

/s/ Kurtis T. Wilder
/s/ E. Thomas Fitzgerald
/s/ Brian K. Zahra

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

² *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).